

7
No. 2834

IN THE
United States Circuit Court of Appeals
FOR THE NINTH CIRCUIT

PRUDENTIAL INSURANCE COMPANY OF
AMERICA, a Corporation,

Plaintiff in Error.

vs.

ADA T. STEWART,

Defendant in Error.

IN ERROR TO THE DISTRICT COURT OF THE UNITED
STATES FOR THE WESTERN DISTRICT OF
WASHINGTON, SOUTHERN
DIVISION.

TRANSCRIPT OF RECORD

Filed

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HON. EDWARD E. CUSHMAN, *District Judge.*

**Names and Addresses of Attorneys
Upon This Writ:**

S. A. KEENAN,

Attorney for Plaintiff in Error,
Empire Bldg., Seattle, Wash.

S. WARBURTON and
BOYLE, BROCKWAY & BOYLE,
Attorneys for Defendant in Error,
Fidelity Bldg., Tacoma, Wash.

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Ada T. Stewart_____	20
Harriet Baker _____	20

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*In the District Court of the United States, for the
Western District of Washington,
Southern Division.*

ADA T. STEWART,

Plaintiff,

vs.

THE PRUDENTIAL INSURANCE COMPANY
OF AMERICA, a corporation,

Defendant.

No. 1915

C O M P L A I N T.

Comes now the above named plaintiff, wife of the late Ernest C. Stewart, and complaining of the above named defendant, the Prudential Insurance Company of America, for a cause of action alleges:

I.

That the said defendant is a corporation, duly organized, acting and existing under and by virtue of the laws of the State of New Jersey, with its principal place of business at Newark, New Jersey, for the purpose of carrying on a life insurance business.

II.

That during all the times herein mentioned, the plaintiff was and now is a resident, citizen and inhabitant of Pierce County, situated in the Western District of Washington, Southern Division.

III.

That on the 2nd day of February, 1915, the deceased Ernest C. Stewart signed a written application to the defendant company on the printed

form prepared and furnished by the company, for a policy of insurance in the sum of \$5000.00, which, by the terms of the application, was to become a part of any contract of insurance issued thereon, a copy of which application is hereto annexed, marked Exhibit "A" and by reference, made a part of this complaint.

IV.

That one of the questions propounded to the deceased by the defendant company in said application was:

"Is premium to be paid annually, semi-annually or quarterly," to which the deceased replied: "Quarterly." That another question propounded to the applicant on said printed form was:

"What amount have you paid in advance on account," to which the applicant answered: "C. O. D.", (meaning cash on delivery.)

V.

That said application prepared by the defendant company contained the following agreement:

"And it is further agreed that the policy herein applied for shall be accepted subject to the privileges and provisions therein contained, and said policy shall not take effect until the same shall be issued and delivered by the said Company, and the first premium paid thereon in full, while my health, habits and occupation are the same as described in this application."

VI.

That thereafter, and in pursuance and acceptance by the defendant company of said application, it issued its policy of life insurance, a copy

of which is annexed hereto, marked Exhibit "B" and by such reference, made a part of this complaint.

VII.

That among the provisions therein contained, was the following:

"PREMIUM—Twelve and 70/100 Dollars, payable on the delivery of this policy and thereafter quarter-annually at the Home office of the company,"

following this with an alternative provision of paying quarterly on certain dates mentioned, to local agents in Tacoma, providing such agents had official receipts signed by the president or secretary, and countersigned by an authorized agent of the company.

VIII.

That on the 15th day of April, 1915, said policy of insurance was delivered to the said deceased, and the first premium paid thereon.

IX.

That it was further provided by one of the terms and conditions of the policy as follows:

"GRACE IN PAYMENT OF PREMIUM.—In the payment of any premium under this policy, except the first, a grace of one month, not less than thirty days, without interest, will be allowed during which time the policy will remain in force."

X.

That on the 19th day of July, 1915, said Ernest C. Stewart died by accidental drowning and thereafter, and on or about August 23, 1915, the de-

fendant was duly notified of the death of the said Ernest C. Stewart and on or about October 23, 1915, due and sufficient proofs of the death were submitted to the defendant.

XI.

That on or about October 29, 1915, the defendant denied liability in a letter addressed to Mr. H. H. Johnson, agent for plaintiff, in words and figures as follows:

"In Re 1919116—Ernest C. Stewart, Oct. 29, 1915.

Mr. H. H. Johnson,
c-o Tacoma Daily Index,
Bankers Trust Building,
Tacoma, Wash.

Dear Sir:—

We enclose herewith draft for \$12.70 which accompanied your October 23rd letter and would advise that we cannot accept the payment as the policy according to its terms, became null and void on June 19th, 1915.

Very truly yours,
C. P. KENDALL,
Manager."

XII.

That on the 28th day of October, 1915, Robert Gemmell, assistant secretary of the company, wrote H. H. Johnson, agent for plaintiff, a letter in part as follows:

"You will recall that the first premium was paid on April 15, when the policy was delivered to Mr. Stewart in our Tacoma office by Mr. Dole, the

Superintendent in charge. One month before the due-date of the second premium a notice of the premium due May 19th was sent to Mr. Stewart from this office, and ten days before the end of the grace period (which expired June 19, 1915), Mr. Dole sent a notice to the insured called special attention to the approaching end of this grace period."

XIII.

Plaintiff alleges that the due-date of the second premium was due by the terms of the policy on the 15th day of July, 1915, or one-quarter of a year after the policy was delivered, and the first premium paid, and that one month's grace was allowed, within which to pay, before the policy would become forfeited, and that the said Ernest C. Stewart died within said period.

XIV.

That said Ernest C. Stewart, during his lifetime, and the above named plaintiff, have duly complied with all the conditions of said contract by either of them necessary to be complied with.

XV.

That plaintiff is now the owner and holder of said contract, and there is now due her from the said defendant, the full sum of \$4961.90, together with interest thereon from the 29th day of October, 1915; that said defendant has wholly neglected to pay said policy or any part thereof.

WHEREFORE plaintiff demands judgment against the defendant for the sum of \$4961.90, together with interest thereon from the 29th day of

October, 1915, besides her costs and disbursements of this action.

S. WARBURTON and
BROCKWAY & BOYLE,
Attorneys for Plaintiff.

(Filed Nov. 10, 1915)

(Duly Verified.)

(To the complaint is annexed copies of the Policy of Insurance, application for Insurance, and Medical Examination. By stipulation, the medical examination is entirely omitted. The entire policy of insurance, and the portions of the application, designated in said stipulation, are printed at pages 33 to 45 of this record.)

(Omitting Title.)

Now comes the defendant and demurs to the complaint filed in the above entitled cause, and for cause of demurrer alleges:—

That said complaint does not state facts sufficient to constitute a cause of action.

Dated December 7th, 1915.

(Filed Dec. 9, 1915.)

S. A. KEENAN,
Attorney for Defendant.

ORDER.

(Omitting Title.)

The above cause coming on for hearing and argument on the demurrer of the defendant to the plaintiff's complaint, the court having heard the argument,

IT IS HEREBY ORDERED that said demurrer be and the same is hereby overruled, and the defendant is given ten days from the 13th day of

December, 1915, in which to answer plaintiff's complaint.

An exception by the defendant to the court's ruling, is noted.

Dated this 17th day of December, 1915.

EDWARD E. CUSHMAN,

(Filed Dec. 17, 1915.)

Judge.

AMENDED ANSWER.

(Omitting Title.)

Now comes the defendant and for an amended answer to the complaint of the plaintiff filed herein, admits, denies and alleges:—

I.

Defendant admits the averments contained in paragraph 1 hereof.

II.

Answering paragraph 2 thereof, this defendant has no knowledge or information sufficient to form a belief, and therefore denies the same.

III.

Answering paragraph 3 thereof, defendant admits the same, and believes that Exhibit A is a full, true and correct copy of said application.

IV.

Answering paragraph 4 thereof, the defendant admits the correctness of the quotations but denies the interpretation placed thereon by the plaintiff.

V.

Answering paragraph 5 thereof, defendant admits the same.

VI.

Answering paragraph 6 thereof, the defendant admits the same and believes that Exhibit B is a true and correct copy of said policy of insurance.

VII.

Answering paragraph 7 thereof, defendant admits the correctness of the quotation contained therein but denies each and every part of the remainder of said paragraph.

VIII.

Defendant admits that on or about April 15th, 1915, said policy of insurance was taken up by said insured.

IX.

Defendant admits the correctness of the quotation contained in said paragraph.

X.

Answering paragraph 10 of said complaint, defendant has no information or knowledge sufficient to form a belief and therefore denies the same.

XI.

Answering paragraph 11 thereof, defendant admits the same.

XII.

Answering paragraph 12 of said complaint, defendant admits the correctness of the quotation therein contained.

XIII.

Answering paragraph 13 of said complaint, defendant denies the same and the whole thereof.

XIV.

Answering paragraph 14 of said complaint, the defendant denies the same and the whole thereof.

XV.

Answering paragraph 15 of said complaint, defendant denies the same and the whole thereof.

For further answer and defense to said complaint the defendant alleges:— —

1. That on February 2nd, 1915, Ernest C. Stewart at Tacoma, Washington, signed an application to defendant for a life insurance policy on his life, a copy of which policy is annexed to plaintiff's complaint. That at the same time and place, he also signed a medical examination as part of his application, which application, as so executed, was at once mailed to defendant's home office at Newark, New Jersey.

2. That immediately on its arrival, at the home office, said application was submitted to the medical department of defendant, and to the other officials whose duty it was to pass thereon, and in due course said application was approved and accepted by the defendant, and on February 19th, 1915, it duly executed and issued, thereon, its policy of insurance Number 1919116 on the life of said Ernest C. Stewart.

3. That so soon as the said policy was executed and issued, it was mailed to defendant's agent at Tacoma to be delivered at once to said assured. Said policy was received by defendant's agent on or about February 24th, 1915, and was immediately tendered to said assured who thereupon said he was not able to pay the first premium, and requested defendant's agent to hold it for a short time, and he would pay the premium. That as requested, defendant's agent kept said policy for the assured ready, at all times, to deliver it to him upon the

payment of said first premium. That on or about April 15th, 1915, said assured paid said premium and the policy was then delivered to him. That defendant was, in no way, to blame for the delay in the delivery of said policy, but that said assured was entirely responsible therefor.

4. That said policy of insurance was written and executed in accordance with the conditions of said application and the agreement of the assured and defendant; that said assured, at the time the policy was tendered to him and also at the time he paid the first premium and received the policy, knew the second quarterly premium, by the terms of the policy, would become due May 19th, 1915, and the subsequent quarterly payments on the 19th of August, November, February and May of each recurring year during the life of the policy. That with full knowledge thereof, he received and accepted said policy and kept it in his possession. By reason thereof, this plaintiff is now estopped from denying that the premiums were due and payable as aforesaid.

5. That by reason of the non-payment of the second quarterly premium due on May 19th, 1915, said policy lapsed and became void on June 19th, 1915.

Wherefore, defendant demands judgment for the dismissal of this case and for its costs.

Dated January 4, 1916.

S. A. KEENAN,

Attorney for Defendant.

(Filed Feb. 1, 1916)

(Duly verified.)

R E P L Y.

(Omitting Title.)

Comes now the plaintiff, and in reply to the further and separate defense of the defendant, and says:

I.

In reply to paragraph III. of said defense, plaintiff admits that on or about the 15th day of April, 1915, the insured Ernest C. Stewart paid the first premium, and the policy was then and there delivered to him by the defendant's agent, but denies that she has any knowledge or information sufficient to form a belief, as to each and every other allegation contained in said paragraph, and therefore denies the same.

II.

In reply to paragraph IV. plaintiff admits that the policy of insurance was written and executed in accordance with the conditions of the application and agreement, between the insured and the defendant, but plaintiff denies each and every other allegation in said paragraph contained.

III.

In reply to paragraph V. of said defense, plaintiff denies each and every allegation therein contained.

In further reply to the allegations contained in said separate affirmative defense, plaintiff alleges:

That prior to the signing of the application of said insurance by Ernest C. Stewart, the defendant's agent exhibited to him a copy of the policy that the company would issue, provided, he signed the application and paid the premium; that said

printed form of policy which was prepared by the company for such purpose, contained the provision which was afterwards incorporated in the policy actually issued on the life of said Stewart, to-wit:

“PREMIUM—_____Dollars payable on the delivery of this policy and thereafter quarterly annually at the home office of the company.”

That it was understood and agreed between the said Stewart and the agent of the insurance company, that the policy according to its terms, would not go into force and effect until the same should be delivered and the premium paid and that the next quarterly premium would be payable one-quarter of a year after the date of the payment of the first premium and the delivery of the policy, and that said insured understood, that at the time of the delivery of the policy, and in accordance with its terms, that the second quarterly premium would be payable one-quarter of a year after the 15th day of April, 1915.

WHEREFORE plaintiff prays for judgment as in her complaint set forth.

S. WARBURTON and
BROCKWAY & BOYLE,
Attorneys for Plaintiff.

(Filed January 29, 1916.)

(Duly verified.)

MOTION TO STRIKE.

(Omitting Title.)

Now comes the defendant and moves the court:

I.

That the portion of said reply beginning with the word “That” in Line 5, page 2, and ending with

the word "Company" in Line 15 of said page, be stricken for the reason that the same is wholly immaterial and inadmissible in the pleadings for any purpose whatever.

II.

That the portion of said reply beginning with the word "That" in Line 16, page 2, and ending with the figures "1915," line 26 of said page, be likewise stricken for the reason that it is incompetent, immaterial and inadmissible in the pleadings for any purpose whatever.

Notwithstanding the foregoing motions, but insisting thereon, and in the event the court should overrule said motions or either of them, the plaintiff further moves:

1. That plaintiff be required to set out the name and address of the agent which she claims exhibited a copy of the policy to the assured.

2. That plaintiff be required to set out and make more definite and certain by stating the name and address of the agent of the company who stated to assured that the policy would not go into force and effect until the same should be delivered and the premium paid.

Dated February 1, 1916.

S. A. KEENAN,
Attorney for Defendant.

(Filed Feb. 1, 1916.)

(Omitting Title.)

The above entitled case coming on for consideration May 29th, 1916, on the motion of defendant to strike certain portions of plaintiff's reply, and

the Court having considered the same and the argument of counsel for the respective parties:

IT IS ORDERED that said motion be and the same is hereby sustained.

EDWARD E. CUSHMAN,

(Filed 1916.)

Judge.

EMPANELMENT OF JURY.

On May 31st, 1916, all things being regular, plaintiff appearing in person and by her counsel S. Warburton and Boyle, Brockway & Boyle; and defendant appearing by its counsel, S. A. Keenan, a jury was regularly called, selected, sworn and empaneled to try the cause.

VERDICT.

(Omitting Title.)

We, the jury empaneled in the above entitled cause, find for the plaintiff, Ada T. Stewart, and against the defendant, The Prudential Insurance Company of America, in the sum of Five Thousand One Hundred Thirty Five and 50/100 Dollars, being instructed by the Court so to do.

FRANK B. COLE,

(Filed May 31, 1916)

Foreman.

JUDGMENT.

(Omitting Title.)

The above entitled matter having come regularly on for trial on May 31, 1916, the plaintiff being present and represented by her counsel, S. Warburton, and Boyle, Brockway & Boyle, and the defendant being represented by its counsel, S. A. Keenan, and a jury having been empanelled, and plaintiff having introduced her evidence and rested, and

the defendant having introduced its evidence and rested, and plaintiff having introduced her evidence in rebuttal and rested, and the court having instructed the jury, at the request of plaintiff, to return a verdict in favor of plaintiff, the jury having considered of its verdict, and having returned a verdict in favor of the plaintiff in the sum of \$5135.50, the court being fully advised in the premises,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that the plaintiff, Ada T. Stewart have and recover from the defendant the Prudential Insurance Company of America, the full sum of \$5,135.50, together with interest thereon at the rate of six per cent per annum from said 31st day of May, 1916, together with her costs and disbursements herein, to be taxed by the clerk of the court, and that judgment be and the same is hereby entered in her favor and against the said defendant in said sum, said judgment to have effect and be entered as of May 31, 1916.

EDWARD E. CUSHMAN,
Judge.

Dated this 26th day of June, 1916.
(Filed June 26, 1916.)

PETITION FOR A NEW TRIAL.

(Omitting Title.)

Now comes the defendant and respectfully petitions the Honorable Court for an order setting aside the verdict returned in this case and granting the defendant a new trial of said cause, for the reason and upon the grounds as follows, to wit:—

I.

Insufficiency of the evidence to justify the verdict and judgment:—

(a) It appears from the application and policy of insurance that the insurance policy lapsed and ceased to be a contract for any purpose prior to insured's death.

(b) The testimony received on the trial conclusively shows that the insured placed that construction on the policy.

(c) The plaintiff has entirely failed to offer any evidence or testimony establishing the existence of any contract of insurance between the insured and the company at the time of the former's death.

II.

Error in law occurring at the trial:—

(a) The Court erred in over-ruling defendant's demurrer to the plaintiff's complaint.

(b) The Court erred in denying plaintiff's objections to the introduction of any testimony, on the part of the plaintiff, at the opening of the trial, for the reason that her complaint did not state a cause of action against the defendant.

(c) The Court erred in denying defendant's motion, after the opening statement of counsel for plaintiff, for judgment on the pleadings.

(d) The Court erred in denying defendant's motion for a directed verdict in favor of defendant at the close of plaintiff's case.

(e) The Court erred in denying defendant's motion for a directed verdict in its favor at the close of all the testimony.

(f) The Court erred in granting plaintiff's motion for a directed verdict at the close of all the testimony.

(g) The Court erred in directing and instructing the jury that the insurance policy was in full force and effect at the time of the insured's death.

(h) The Court erred in accepting and recording the verdict of the jury.

To all of which defendant's counsel duly excepted, and the exception was allowed by the Court.

WHEREFORE, defendant prays the Court that said verdict, and judgment if entered thereon, be set aside, and a new trial be granted herein.

Dated at Seattle, Washington, June 12th, 1916.

S. A. KEENAN,
Attorney for Defendant.

(Filed June 14, 1916.)

(Duly verified.)

ORDER.

(Omitting Title.)

The above entitled matter having come regularly on for hearing on the defendant's motion for a new trial, the court being duly advised in the premises,

IT IS HEREBY ORDERED, that said motion be and the same is hereby denied, and an exception allowed the defendant.

Dated this 19th day of June, 1916.

EDWARD E. CUSHMAN,
(Filed June 19, 1916.) Judge.

STIPULATION.

(Omitting Title.)

It is hereby stipulated and agreed by and between parties to the above entitled cause that defendant's time in which to prepare and serve a pro-

posed bill of exceptions in the above entitled cause may be extended to June 30th, 1916.

Dated June 1st, 1916.

S. WARBURTON,
BOYLE, BROCKWAY & BOYLE,
Attorneys for Plaintiff.

S. A. KEENAN,
Attorney for Defendant.

On considering the foregoing stipulation, and it appearing a proper cause for such an order:

IT IS HEREBY ORDERED that defendant's time in which to prepare and serve its proposed bill of exceptions in the above entitled cause be and the same is hereby extended to June 30th, 1916.

Dated June 5, 1916.

EDWARD E. CUSHMAN,
(Filed June 5, 1916.) Judge.

STIPULATION.

(Omitting Title.)

Whereas defendant's Proposed Bill of Exceptions has been heretofore duly served and filed, and plaintiff, Ada T. Stewart, having no amendments to propose thereto:

IT IS HEREBY STIPULATED AND AGREED by and between the parties to this action through their respective counsel, that the Hon. Edward E. Cushman, the Judge who tried said action, may settle and sign the Proposed Bill of Exceptions, filed by defendant herein, as Bill of Exceptions in this case, and that the same may be signed by said

Judge at Seattle, Washington, in said district where said cause was tried.

Dated June 27th, 1916.

S. WARBURTON,
BOYLE, BROCKWAY & BOYLE,
Attorneys for Plaintiff.

S. A. KEENAN,
Attorney for Defendant.

(Filed June 29, 1916.)

BILL OF EXCEPTIONS.

(Omitting Title.)

BE IT REMEMBERED that in the trial of the above entitled cause, on the 31st day of May, A. D. 1916, the Hon. Edward E. Cushman presiding, both parties appearing by their respective counsel. A jury was duly and regularly impaneled and the following proceedings had:—

1. Defendant's counsel moved the Court for judgment on the pleadings on the ground and for the reason that no cause of action was stated in the complaint. The Court over-ruled the motion; defendant excepted to the ruling of the Court, which exception was allowed.

2. Defendant's counsel objected to the introduction of any testimony whatever on the part of the plaintiff on the ground and for the reason that no cause of action was stated against the defendant. The Court over-ruled the objection; defendant excepted to the ruling of the Court, which exception was allowed.

3. Plaintiff was called to the stand as a witness in her own behalf, and testified as follows:

My name is Ada Stewart. I was born in the State of Washington. Ernest Stewart mentioned in the complaint was my husband. We were married in Tacoma two years ago last November. After that, we lived at Sprague, Washington. We came to Tacoma, my home. I was born at Union City. My husband died July 19th, 1915. I have two children.

Thereupon, Harriet Baker was called as a witness on behalf of the plaintiff, and being duly sworn, testified as follows:

I was acquainted with Mr. Stewart, the husband of Mrs. Stewart, during his lifetime. Last July was the last time I saw Mr. Stewart, July 19th. I saw his body after his death, July 21st.

4. The policy of insurance described in the complaint was offered and received in evidence, and is hereto annexed, marked Exhibit A and made a part of the Bill of Exceptions.

PLAINTIFF RESTS.

Thereupon, defendant's counsel moved "The Court that the jury be directed to return a verdict in favor of the defendant in this case, for the reason that the complaint does not state facts sufficient to constitute a cause of action and that the evidence does not show any liability on the part of the defendant in this case." The Court over-ruled the motion; defendant excepted to the ruling of the Court, which exception was allowed.

Thereupon, the defendant called as a witness in its behalf Alfred Yantis who, being duly sworn, testified as follows—:

My name is Alfred Yantis, life insurance busi-

ness. Have been engaged in that business seven years this October, with this company at that time and was so engaged with this company last January and February. I recollect about the insurance policy just received in evidence in this case. The policy is dated February 19th. It came into my hands about the 26th of February.

“THE COURT: Do you admit that it was delivered on the 15th of April?”

“MR. KEENAN: Yes; that it was delivered on the 15th of April.”

“MR. WARBURTON: And the premium paid on that date.”

“MR. KEENAN: Yes.”

On the 26th of February I went to Mr. Stewart's home in the evening and explained the policy to him.

“MR. KEENAN: Tell what was said and done between you and Mr. Stewart on the 26th of February, when you say you delivered it to him?”

“MR. WARBURTON: We object to that.”

“THE COURT: Upon what theory do you offer this testimony?”

“MR. KEENAN: The theory is of course, that as soon as the policy was received by us, we presented it to Mr. Stewart, and we want to show by this witness' testimony the reason Mr. Stewart did not accept the policy until some time after, because he did not have the money, and that he requested the agent to hold it until he got the money, and that he did not get the money until the 15th of April to pay for it.”

The objection was over-ruled and the witness proceeded as follows:

I explained the policy to Mr. Stewart, and he stated at that time that it was not convenient to pay the premium, and he stated he would come to the office. I went over the contract, stating that the premiums fell due in February, May, August and November, and that it was necessary for him to pay the premium before the policy was in force. He stated that he expected some money or that there was some money due him or something of that kind, and that he would be in the office. The reason I did not deliver him the policy, it was necessary for him to pay for the contract before I delivered it. When he requested me to hold the policy, I told him it was not in force until he paid for it. I afterwards called at Mr. Stewart's home to deliver the policy and get the premium. That was about May.

5. It was the date that he paid the premium. I went to the house in the morning with the policy, and Mrs. Stewart stated that he had left the house with the money, intending some time during the day to drop into the office. I had no conversation with Mr. Stewart at that time.

CROSS EXAMINATION.

I impressed upon his mind that the policy would not take effect or be in force until he paid the premium.

John D. Dole, being first duly sworn, testified as follows on behalf of the defendant:

My name is John D. Dole. Am Superintendent of the Prudential Insurance Company in Ta-

coma. The insurance policy offered in evidence went through my office. After receiving applications for insurance policies such as this, the custom of my office in relation to the General Home Office at Newark, New Jersey, is to turn over to the local physician the application, and immediately upon making the examination the physician mails it direct to the Home office. It usually takes from ten to fifteen days to receive the policy from the Home Office after the receipt of the application of the local physician. This application and policy went through the same routine. We have no record in the office of just when the policy was received here. Immediately on receipt of the policy it was given to the man who wrote the application, Assistant Superintendent Yantis, the gentleman who just testified. It was his duty to immediately take the policy to the applicant for delivery.

I remember when Mr. Stewart called at the office and paid his premium. It was paid to me personally. I delivered the policy to Mr. Stewart. Mr. Stewart called at my office and introduced himself, stating that my representative had called at his home with the policy, and that owing to financial circumstances, he was unable to pay until that time. I questioned him very closely about the cause, and he informed me that it was owing to his financial circumstances that he could not pay for the policy before. I went into the details of the policy with him. I opened up the policy. I had him sign his name. I was not acquainted with him, and I told him to affix his signature on a piece of paper and compared it with the application to be sure he was the man who signed the application. I read the policy over, that is, the

dates it was due and the beneficiary and in fact everything applying to the face of the policy and the due dates. I also asked Mr. Stewart if he was aware of the fact that his paying that day made no difference in the next payment and he said that he thoroughly understood that. I told him that his next payment would be due and asked him if he did not think it advisable to pay both at that time, being so close to the next payment. I also told him that if he did not wish to pay at that time that he would have a little over sixty days to pay the next premium, and he said that that was perfectly satisfactory. To my recollection, at that time he was familiar with the policy and the dates it was due throughout the entire year. I say I called his attention to the due date of the next premium, in May, and the first premium was in April. I called his attention to the fact that the next premium was due the following month. I stated to him that he could pay both at that time if he wanted to.

CROSS EXAMINATION.

Mr. Yantis immediately came back to the office and left it (the policy) in my possession. Mr. Stewart came in after he left. I explained to him that the policy did not come into force and effect until it was delivered and the premium actually paid. I did not read to him "Premium \$12.70, payable on the delivery of this policy, that was the due date on the 15th, and thereafter quarter annually." I did not think that meant anything. I could not say that a copy of this policy was shown to him when the application was made. I did not write it. That is not a custom of my

company. It is not a custom of insurance agents, not unless a man demands it. We do not want to hide it. We have nothing to hide. I mean to say that it is not the custom of a soliciting agent to show a man who is going to take out a \$5,000.00 or a \$10,000.00 policy to show him the policy he will get, unless he asks for it. I have known of a man taking out insurance and not ask for it. If it should appear from the testimony that Mr. Stewart as a matter of fact understood that his next quarter annual premium was not payable until the 15th of July, I would not testify that I convinced him it was due on the 15th of May, I could not convince him of that. I would not necessarily come to the conclusion that he so understood it.

REDIRECT EXAMINATION.

I do recall about this notice of second premium being sent from my office through my orders about five days before the second premium was due.

Miss J. Valentine, being first duly sworn, testified as follows on behalf of the plaintiff:—

I remember the Stewart policy. We have no record of just what date the policies come in but it is usually five days after leaving the Home Office, five days in the mail. I have a recollection of sending a notice out about two weeks. I sent a notice by an agent out to see if these people wanted to pay the premium. If they still wanted to keep their insurance, as I always do, and the agent reported that these people were out on a vacation and that he could not locate them, and Mr. Dole was standing there, and he immediately called my attention to the fact that I should send

out a written notice by mail, which I immediately did. I think the due date is May 19th and then there is thirty days' grace, and I sent it out five days prior to June 19th. I have a distinct recollection of having sent this notice out.

CROSS EXAMINATION.

Yes, sir, we keep a record of those notices, the premium receipt shows record. I have no record at all to show when I sent this notice out. I know I sent it out. Yes, sir, I have a distinct recollection of having sent out this particular notice. I am sure of that, yes, sir. I can not recall every notice that I sent out on every policy from my office, no, sir. I remember this so well particularly because the agent came in and said they were on a vacation. I can not state when that was, but from my recollection about five days before the expiration of the thirty days' grace period. That would be about five days before the 19th of June. Then the agent would go up there about the 14th. Mr. Mottoe was the agent. He said they had gone on a vacation. He reported that they had gone a vacation. I do not know whether that was true or not.

Thereupon, defendant offered in evidence the original application, upon which the policy in question was issued. Hereto annexed, marked Exhibit B and made a part hereof.

DEFENDANT RESTS.

In rebuttal, plaintiff, Ada Stewart, was recalled to the witness stand.

Q. Will you state what your husband said on the morning of his death, if anything, in ref-

erence to the payment of the premium on this policy?

MR. KEENAN: I object to that as wholly incompetent, irrelevant and immaterial and inadmissible under the pleadings in this case.

Objection sustained.

MR. WARBURTON: The testimony is in here, that he understood that the policy, that the premium was payable on the 15th of June. I want to show by this witness that he never understood anything of the kind; that as a matter of fact, he understood that he had until the 15th day of July to pay the premium and had a month thereafter, and that he stated so on the morning of his death; that he was about to send the check and that he had until the 15th of July to pay it; that is to refute their testimony.

Objection sustained.

MR. WARBURTON: I think we will offer to prove by this witness, that Mr. Stewart, on the morning of the day of his death was engaged in writing letters and that after he had finished, he said to Mrs. Stewart, that the premium on their policy was about due, but that he had a month's grace, which would carry the policy into August, but that he intended to pay the premium in the next day or so and did not reach it that morning.

MR. KEENAN: Same objection.

Objection sustained. Exception allowed.

On the 14th of June we were still at our home at that time. We were home all the month of June. My husband taught school part of the month of June, and after vacation, worked on the

little home. I do not recall when school was out, I think it was the 12th. We went on our vacation July 2nd. Practically, we were at home all times prior to July 2nd, yes, sir.

CROSS EXAMINATION.

During the month of June we did not take any vacation unless it was on Sunday. I do not know whether the notice came to the home.

BOTH SIDES RESTED.

5. MR. KEENAN: At the conclusion of all the testimony, defendant moves the Court to direct a verdict for the defendant, the Prudential Insurance Company of America, and to instruct the jury to return a verdict for the defendant.

Motion denied; exception allowed.

Plaintiff moves at this time that the Court direct the jury to return a verdict for the plaintiff for the sum of \$4,961.90, together with interest thereon at the rate of 6 per cent per annum from the 29th day of October, 1915, to the present date.

MR. KEENAN: Defendant objects to the motion of plaintiff for the reason that there are issues of fact, so far as the plaintiff is concerned, that must be passed upon by the jury, and defendant does not waive the submission of this case to the jury so far as plaintiff is concerned.

THE COURT: Upon what issue of fact?

MR. KEENAN. The issue of fact to be passed upon in any event would be that when the policy was delivered, the assured was fully apprized and notified of the terms and conditions of the policy which can bear but one construction, and that is

that it expired on the 19th day of June, the last day of grace.

THE COURT: You submit to the Court that this is the only issue of fact that you are asking to have submitted to the jury for trial? You have some question here about the citizenship of the plaintiff.

MR. KEENAN: No, there is no question about that. No, sir, I think substantially the only issue of fact, (aside from the written contract itself) is what was said and done at the delivery of the policy.

6. THE COURT: That is the way I understand it. I do not wish to hurry you into any admission, but I do not care to make any false assumption on just what the issue is. That is the way I understood the issue in the case all the way through. The plaintiff's motion for an instructed verdict will be granted. Gentlemen of the jury, this policy, to read this whole provision, "premium, \$12.70, payable on the delivery of this policy, and thereafter quarter-annually at the home office of the company, or as provided under the heading 'Provisions' on the second page hereof, in exchange for the company's receipt on or before the 19th day of February, May, August and November in every year during the continuance of this policy until ten full years' premiums shall have been paid or the prior death of the insured." Now, if we had nothing to go by but that language, some doubt might be admitted as to whether "quarter-annually" referred to after the date of the delivery of the policy and the payment of the first premium, or whether it referred to quarter dates afterwards,

that is the 19th day of February, May, August and November after payment, but, when you pause to consider the purpose of the transaction, that is that that first \$12.70 paid for something, if that was a quarter's insurance, then it is wholly unreasonable to conclude that the insurance company was taking something for nothing, that it was taking a quarter's insurance for thirty days' insurance. I, therefore, grant the plaintiff's motion, and instruct you to return a verdict in plaintiff's favor, the policy being for \$5000.00, and three of the quarter payments of the premium for that year not having been paid, that will be deducted from the \$5000.00, leaving, as I understand the calculation of counsel, \$4961.90, and then interest on that at 6 per cent. from October 29th, 1915 (interrupted.)

MR. WARBURTON: That amounts to \$173.60, the way we figure it.

THE COURT: Gentlemen of the jury, it will not be necessary for you to retire from the box to deliberate upon this verdict, but, as prepared by the court it reads, "Ada T. Stewart, plaintiff, vs. The Prudential Insurance Company of America, defendant. No. 1915. Verdict. We, the jury empanelled in the above entitled cause, find for the plaintiff, Ada T. Stewart, and against the defendant, the Prudential Insurance Company of America, in the sum of \$5135 & 50/100 Dollars, being instructed by the Court so to do." If you will ballot on your foreman in the box, the clerk will hand the verdict to whatever foreman you select.

Before the jury returned its verdict, defendant objected to the peremptory instruction of the

Court for plaintiff in charging the jury to return a verdict for the plaintiff upon the cause of action set forth in the complaint because it takes from the jury the consideration of defendant's evidence upon the question as to the interpretation placed upon the contract of insurance by the company and the insured at the time of the delivery and acceptance of the policy. It takes from the jury the right to pass upon the acts and conduct of both parties to the contract at the time of its final delivery and acceptance. It takes from the jury the right to pass upon the contract sued upon, which contract had entirely lapsed and ceased, as disclosed by the evidence offered, prior to the insured's death.

Which objection was over-ruled by the Court and an exception at the time allowed by the Court.

Whereupon, the jury elected a foreman, and without leaving the box returned a verdict in accordance with the instruction of the Court.

MR. KEENAN: I object to the instruction of the Court and to the receipt of the verdict of the jury.

Objection over-ruled and exception allowed.

Stay of proceedings for thirty days allowed.

Thereafter and in due time, defendant prepared, filed and served upon plaintiff its Petition for a New Trial upon the grounds therein stated, which petition came on regularly for consideration before the Court on June —, 1916, and after considering the same, said petition was denied and over-ruled, and an exception was taken by defendant and at the time allowed by the Court.

After service of the Summons and Complaint

in said action and in due and regular time, defendant interposed a Demurrer to said Complaint upon the ground and for the reason that said Complaint does not state a cause of action against the defendant; which Demurrer duly came on for argument before the Court and the same was overruled and denied in every particular, and an exception to such ruling was duly taken and at the same time allowed by the Court.

WHEREFORE, the defendant prays that this, its Bill of Exceptions, may be allowed, settled and signed.

S. A. KEENAN,
Attorney and Counsel for Defendant.

STATE OF WASHINGTON,
County of Pierce,—ss.

BE IT REMEMBERED, this cause coming on at this time duly and regularly to be heard in open court, being the day stipulated by counsel for respective parties for the settlement and certification of the Bill of Exceptions in the foregoing entitled action pursuant to due notice, both parties being present by their respective counsel:

Therefore, I, Edward E. Cushman, Judge of the United States District Court of the United States for the Western District of Washington, Southern Division, the Judge before whom said cause was tried, do hereby certify that the matters and proceedings contained in the foregoing Bill of Exceptions are matters and proceedings occurring in said cause, and the same are hereby made a part of the record herein, and that the same contains all the material facts, matters, pro-

ceedings heretofore occurring, and the evidence received in said cause, not already a part of the record herein.

I do hereby further certify that the foregoing Bill of Exceptions contains all the evidence and testimony adduced upon the trial of said cause, together with all objections and exceptions made and taken, at the time, to the admission or exclusion of testimony, and all motions, offers to prove, and admissions and rulings thereon, and all objections and exceptions taken and allowed at the time of the respective rulings, and that the exhibits herein mentioned and hereto attached are all the exhibits adduced upon the trial of said cause.

Done in open court this 29th day of June, A. D. 1916, and during the term of said court at which said cause was tried and determined.

EDWARD E. CUSHMAN,
Judge of said Court.

Exhibit B, Application for Insurance.
Received, Feb. 13, 1915.

MEDICAL DEPARTMENT

Approved Feb. 13, 1915, by J. E. B.

P. R. B. B. 2/3 No. J 2/13.

ORDINARY APPLICATION DEPARTMENT.

Inspection.

Approved Feb. 18, 1915. B. U. H. O. A. D.
No. Discl. Rules modified.

Memorandum:

Received Hold for R. M. H. 2/15.

A. H. 2/15.

B. P. Case. If H. T. remit \$5.00 Med. fee
to Oe.

FOR USE OF HOME OFFICE ONLY

To Be Filled in by Manager or Detached Special Agent. Questions on Reverse Side Applicable to Case Must Be Answered.

Give date on which examination was ordered

-----, 191--

District, Tacoma.

(Seal) Forrest F. Dryden, President.

Who is entitled to the Commission? A. R. Yantis.

Under Asst. Supt. A. R. Yantis.

J. D. Dale, Superintendent, Agency Organizer, Detached Assistant.

Application for Insurance in
THE PRUDENTIAL INSURANCE COMPANY
OF AMERICA,

Home Office, Newark, New Jersey.

Incorporated under the laws of the State of Jersey.

NUMBER 1919116.

1. What is your full name? (Please print.)
ERNEST C. STEWART.

2. What is your present occupation or occupations? Teacher.

3. What are your exact duties? Teaching Manual Training.

4. How long have you been so engaged? Three.

5. Are you engaged in or have you any intention of engaging directly or indirectly in aviation or submarine work? No.

6. Do you intend living or traveling in Alaska or any other possessions of the United States, or in any country except the United States or Canada? If so, give particulars. No.

7. Are you now insured in this or any other company or association? Give full particulars. If in this Company, give policy numbers also.

8. Where were you born? (State or Country.) Missica.

9. When were you born? (Month, day and year.) March 30, 1884.

10. Age nearest birthday? 31.

11. Are you married? Yes.

12. What kind of policy is desired? (Use such terms as Whole Life, 20-Payment Life, 20-Year Endowment, etc. If Intermediate, so state in specifying kind.) Ten Year Term.

13. To whom is this insurance to be payable at your death? (Full name. Please print.) ADA T. STEWART.

Age of Beneficiary, 26.

Relationship to Applicant, Wife.

Present residence, 947 So. Sprague.

14. Residence:

No. 947 So. Sprague Street.

City or Town, Tacoma.

County, Pierce. State, Wash.

15. Business Address:

City or Town, Tacoma. State, Wash.

Name of firm or employer, Tacoma Public Schools.

Nature of business, Teacher.

16. To what address are premium notices or other communications to be sent? (If this question is not answered they will be sent to the residence address.) 947 So. Sprague.

17. Where have you lived during past three years? Wash.

18. Has any company or association ever de-

clined to grant insurance on your life? If answer is yes, give name of company and date. No.

19. Has any company or association ever modified your application either in amount, kind or premium? If so, give name of company, date, and nature of modification. No.

20. Are you negotiating, or have you applied for other insurance on your life at this time in this or any other company or association? If so, give name of company or association and amount. No.

21. NOTE.—State here any request in connection with the insurance proposed. P S Ensert Disibility Clase.

22. Amount of insurance? \$5000.

23. Is premium to be paid annually, semi-annually or quarterly? Quarterly.

24. What amount have you paid in advance on account? C. O. D.

25. Do you wish the privilege of changing the beneficiary? Answer yes or no. Yes.

I HEREBY DECLARE that all the statements and answers to the above questions are complete and true, and I agree that the foregoing, together with this declaration, as well as the statements and answers made or to be made to the Company's Medical Examiner, shall constitute the application and become a part of the contract of insurance hereby applied for, and it is further agreed that the policy herein applied for shall be accepted subject to the privileges and provisions therein contained, and said policy shall not take effect until the same shall be issued and delivered by the said Company, and the first premium paid thereon in

full, while my health, habits and occupation are the same as described in this application.

Witness to Applicant's signature:

A. R. YANTIS.

Full signature of the person whose life is to be insured:

ERNEST C. STEWART.

Dated at Tacoma, Wash., this 26th day of Jan., 1915.

“EXHIBIT A.”

THE PRUDENTIAL INSURANCE COMPANY
OF AMERICA.

In Consideration of the Application for this Policy, which is hereby made part of this contract, a copy of which Application is attached hereto, and of the payment, in the manner specified, of the premium herein stated, hereby insures the life of the person herein designated as the Insured, for the amount named herein, payable as specified, subject to the privileges and provisions on the second and third pages hereof, which are hereby made part of this contract.

The Insured: Ernest C. Stewart.

Amount of Insurance: Five Thousand Dollars, payable immediately upon receipt of due proof of the death of the Insured within ten years from the date of this Policy, while in force, at the Home Office of the Company, in Newark, New Jersey.

Payable to Ada T. Stewart, Beneficiary, Wife of the Insured, if the Beneficiary survive the Insured, otherwise to the executors, administrators or assigns of the Insured.

Premium: Twelve and 70/100 Dollars, payable on the delivery of this Policy and thereafter quarter-annually at the Home Office of the Company, or as provided under the heading "Provisions" on the second page hereof, in exchange for the Company's receipt on or before the nineteenth day of February, May, August and November, in every year during the continuance of this Policy, until ten full years' premiums shall have been paid, or until the prior death of the Insured.

In Witness Whereof, the said The Prudential Insurance Company of America, at its office in the City of Newark, New Jersey, has caused this Policy to be signed by its President and its Secretary, and to be duly attested, this nineteenth day of February, one thousand nine hundred and fifteen.

FORREST F. DRYDEN,
President.

Attest:—WILLARD I. HAMILTON.

Age 31.

5120—55g Ten-Year Term Policy—Non-participating.

Convertible Within Seven Years.

Premiums Payable for Ten Years.

Policy Void Ten Years After Date—Convertible but Non-renewable.

SPECIAL PRIVILEGES.

Grace in Payment of Premiums.—In the payment of any premium under this Policy, except the first, a grace of one month (not less than thirty days) without interest will be allowed, during which time the Policy will remain in force.

Revival of Policy.—If this Policy be lapsed for non-payment of premium it will be revived any time after the date of lapse, provided the term has not expired, upon written application and payment of arrears of premiums with interest at the rate of five per cent. per annum, together with the reinstatement of all indebtedness, and provided evidence of the insurability of the Insured satisfactory to the Company be furnished.

Change of Beneficiary.—The Insured may at any time while this Policy is in force, by written notice to the Company at its Home Office, change the Beneficiary or Beneficiaries under this Policy, such change to take effect only upon endorsement of the same on the Policy by the Company, whereupon all rights of the former Beneficiary or Beneficiaries shall cease; provided, however, that the Insured shall have attained to majority according to the laws of the State in which the Insured resides, and that no such change of Beneficiary shall be valid if the Policy or any interest therein be assigned at the time of such change.

Instalment Privilege.—The amount insured under this Policy is payable in one sum, but, if the amount payable be not less than \$1,000, it may be made payable instead in equal annual instalments in any number from two to twenty-five, or may be made payable to the Beneficiary, if such Beneficiary be one natural person, in equal annual instalments to continue for twenty years and so long thereafter as the Beneficiary shall live.

The amount of such instalments shall be based upon the amount insured under this Policy and shall be determined from the tables given below.

INSTALLMENTS—FROM TWO TO TWENTY-FIVE.

Number of Installments	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25
Amount of each Instalment per \$1,000	\$509	\$345	\$263	\$214	\$181	\$158	\$141	\$127	\$116	\$107	\$100	\$94	\$88	\$84	\$80	\$76	\$73	\$70	\$68	\$66	\$64	\$62	\$60	\$59

INSTALLMENTS—CONTINUOUS.

Age last birthday of Beneficiary at death of Insured	16 and Under	17 to 21	22 to 24	25 to 27	28 to 30	31 to 32	33 and 34	35 and 36	37 and 38	39 and 40	41 and 42	43	44 and 45	46	47 and 48	49	50 and 51	52	53 and 54	55 and 56	57	58 and 59	60 and Over
Amount of each Instalment per \$1,000	\$24	\$45	\$46	\$47	\$48	\$49	\$50	\$51	\$52	\$53	\$54	\$55	\$56	\$57	\$58	\$59	\$60	\$61	\$62	\$63	\$64	\$65	\$66

Trust Fund Privilege.—At the time this Policy becomes payable as a claim the amount insured, or any portion thereof not less than \$1,000, may be left during the lifetime of the Beneficiary in trust with the Company, and the Company will pay thereon, so long as the said amount or said portion thereof remains with the Company, interest at the rate of three and one-half per cent. per annum. The said Trust Fund shall be paid at the death of the Beneficiary to the executors, administrators or assigns of the Beneficiary, but may be withdrawn at any time with accrued interest. The Trust Fund Privilege shall be inoperative if the amount payable under this Policy be less than \$1,000 or if the Beneficiary be a corporation or a firm.

Convertible Into Any Other Regular Form of Policy.—At any time within seven years from its date this Policy, if then in force, may be converted, upon written application of the Insured, and legal surrender of said Policy to the Company, into any other form of Policy issued by the Company and in current use on the date given such new Policy, exclusive of a policy on the Term or the Continuous Annual or the Continuous Monthly Income plan, provided:

That such new Policy shall bear any date from the date of this Policy up to and including the date of the application for conversion as the Insured may direct;

That the amount or commuted value of such new Policy shall not exceed the amount of this Policy;

That such new Policy shall be subject to the payment from its date, in accordance with its terms, of the Company's regular premium charged for such a Policy at such date at the age of the Insured on such date;

That there shall be paid to the Company arrears in premiums under such new Policy at the time of actual conversion, with compound interest at the rate of five per cent. per annum from the due dates of such arrears to the date of the application for conversion, and that in computing such arrears credit shall be allowed the Insured for the premiums actually paid under this Policy since the date of the new Policy, and such credit shall be in the proportion that the amount or commuted value of the new Policy bears to the amount of this Policy; and

That no medical re-examination shall be required at time of such conversion except when application is made for a policy with provision for exemption of payment of premiums in event of total and permanent disability.

PROVISIONS.

Payment of Premiums.—This Policy is based upon the payment of premiums annually in advance, but if premiums be made payable in quarterly or semi-annual instalments, any future instalments of the premium for the current policy year remaining unpaid at the maturity of the Policy shall be considered an indebtedness to the Company on account of this Policy. Premiums

are payable at the Home Office of the Company, but may be paid to an agent of the Company on or before the dates when due, in exchange for official receipts signed by the President or the Secretary and countersigned by an authorized agent of the Company. If any premium be not paid when due, this Policy shall be void and all premiums forfeited to the Company, except as herein provided.

Indebtedness.—Any indebtedness to the Company on account of this Policy will be deducted in any payment or payments or in any settlement under this Policy.

Modifications, etc.—No condition, provision or privilege of this Policy can be waived or modified in any case except by an endorsement hereon signed by the President, one of the Vice Presidents, the Secretary, one of the Assistant Secretaries, the Actuary, the Associate Actuary or one of the Assistant Actuaries. No modification or change shall be made in this Policy except such as is in accordance with the law of the State in which the same is issued. No Agent has power in behalf of the Company to make or modify this or any other contract of insurance, to extend the time for paying a premium, to waive any forfeiture, or to bind the Company by making any promise, or making or receiving any representation or information.

Assignments.—If this Policy shall be assigned, the assignment must be in writing, and the Company shall not be deemed to have knowledge of such assignment unless the original or a duplicate thereof is filed at the Home Office of the Company. The Company will not assume any responsibility for the validity of an assignment.

Suicide.—If within *one year* from the date hereof the Insured shall die by suicide—whether sane or insane—or in consequence of his (or her) own criminal action, the liability of the Company shall not exceed the amount of the premiums paid on this Policy.

Incontestability.—This Policy shall be incontestable after one year from its date, except for non-payment of premium.

Misstatement of Age.—If the age of the Insured be misstated the amount payable under this Policy shall be such as the premium would have purchased at the correct age.

Entire Contract Contained in This Policy.—This Policy together with the Application, a copy of which is attached hereto, contains and constitutes the entire contract between the parties hereto, and all statements made by the Insured shall in the absence of fraud be deemed representations and not warranties, and no such statement shall avoid the Policy or be used as a defence to a claim thereunder unless it be contained in the Application for the Policy and unless a copy of such Application be endorsed upon or attached to the Policy when issued.

NON-FORFEITURE PRIVILEGES.

Paid-up Term Policy.—If this Policy, after being in force three full years, shall lapse or become forfeited for the non-payment of any premium on the date when due, as specified on the first page hereof, and if the Policy be not surrendered in exchange for any other regular form of Policy, as specified in the Special Privilege, “Convertible Into Any Other Regular Form of Policy,” above, the Com-

pany will issue a non-participating Paid-up Term Policy, for an amount less than the amount insured by this Policy, as specified in the following table, to expire at the same time as this Policy, upon the legal surrender of this Policy within three months after the date to which premiums have been duly paid.

Automatic Extended Insurance.—If this Policy, having lapsed or become forfeited as specified in the clause, “Paid-up Term Policy,” above, be not surrendered in exchange for any other regular form of Policy, as specified in the Special Privilege, “Convertible Into Any Other Regular Form of Policy,” above, or for a Paid-up Term Policy as specified in the clause entitled, “Paid-up Term Policy,” the Company will write in lieu of this Policy, *without any action on the part of the Insured*, a non-participating Paid-up Term Policy for the full amount insured by this Policy, such Paid-up Term Policy to be dated on the day to which premiums have been duly paid, and to continue in force for the term indicated by the following table of Automatic Extended Insurance. Such Paid-up Term Policy will be delivered on the legal surrender of this Policy.

Cash Surrender Values Under Paid-up Term Policies.—If this policy shall lapse, as above, and a Paid-up Term Policy as specified in either of the Non-forfeiture Privileges, “Paid-up Term Policy,” or “Automatic Extended Insurance,” above, be issued in lieu thereof, such Paid-up Term Policy may be surrendered at any time for its full reserve value at the time of such surrender.

TABLE ABOVE REFERRED TO.

The amounts stated in the column of the following table headed "Paid-up Term Policy for \$1,000" apply to an original policy of \$1,000. As this Policy is for \$5,000, the Paid-up Term Policy available in any year will be five times the amount stated in said column for that year. The terms of automatic extended insurance apply to the face amount of this policy.

(To expire at the same time as this policy.)

At the End of	Paid-up Term Policy	Automatic Extended Insurance
1 Year	None	None
2 Years	None	None
3 "	\$19.00	0 Years, 45 Days
4 "	26.00	0 Years, 53 Days
5 "	33.00	0 Years, 57 Days
6 "	40.00	0 Years, 56 Days
7 "	47.00	0 Years, 51 Days
8 "	55.00	0 Years, 39 Days
9 "	62.00	0 Years, 30 Days
10 "	Policy Expires	

The surrender values in the above table are based upon the American Experience Table of Mortality with three and one-half percent. interest per annum, and the net value of any such surrender value is at least equal to the entire reserve on this Policy, according to the foregoing standard, less a percentage (not more than two and one-half) of the amount insured by the Policy.

If the premiums of this policy be paid in quarterly or semi-annual instalments, due allowance will be made in computing benefits from the above table for that portion of a year's premium paid over and above the full number of years' premiums indicated.

PETITION FOR WRIT OF ERROR.

(Omitting Title.)

To the Honorable Edward E. Cushman, Judge of the United States District Court aforesaid:

Now comes the Prudential Insurance Company of America, a corporation, by attorney, and respectfully shows that on the 31st day of May, A. D. 1916, the Court directed a verdict against your petitioner and in favor of the plaintiff, and upon said verdict a final judgment was entered on the — day of June, A. D. 1916, against your petitioner, defendant, the Prudential Insurance Company of America.

Your petitioner feeling itself aggrieved by the said verdict and judgment entered thereon, herewith petitions the Court for an order allowing him to prosecute a Writ of Error to the Circuit Court of Appeals of the United States for the Ninth Circuit under the laws of the United States in such cases made and provided.

Wherefore, premises considered, your petitioner prays that a Writ of Error do issue that an appeal in this behalf to the United States Circuit Court of Appeals aforesaid, sitting in the City of San Francisco, California, in said circuit for the correction of the errors complained of and herewith assigned, be allowed and that an order be made fixing the amount of security to be given by plaintiff in error condition as the law directs, and upon giving such bond as may be required that all former proceedings may be suspended until the determination of said writ of error by the Circuit Court of Appeals.

Dated at Seattle, Washington, June 26th, A. D. 1916.

S. A. KEENAN,

Attorney for Petitioner in Error.

(Filed June 29, 1916.)

ORDER ALLOWING WRIT OF ERROR.

(Omitting Title.)

On this 29th day of June, A. D. 1916, came the defendant by his attorney, and filed herein and presented to the court his petition praying for the allowance of a writ of error, and Assignments of Error intended to be urged by it, praying, also, that a transcript of the record and proceedings and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Judicial Circuit and that such other and further proceedings may be had as may be proper in the premises: on consideration thereof, the Court does allow the Writ of Error upon the defendant giving a bond according to law in the sum of \$6,500, which shall operate as a super-sedeas bond.

Done in open court this 29th day of June, A. D. 1916.

EDWARD E. CUSMAN,

(Filed June 29, 1916.)

Judge.

WRIT OF ERROR.

(Omitting Title.)

United States of America, S. S.

The President of the United States, Woodrow Wilson, to the Honorable Judge of the District Court of the United States for the Western Dis-

trict of Washington, Southern Division, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court before you between Ada T. Stewart, defendant in error, and Prudential Insurance Company of America, a corporation, plaintiff in error, a manifest error has happened to the damage of the plaintiff in error, as by said complaint appears, and we being willing that error, if any hath been, should be corrected, and full and speedy justice be done to the parties aforesaid in this behalf, do command you if judgment be therein given, that under your seal you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at San Francisco in the State of California, where said court is sitting, within thirty days from the date hereof, in the said Circuit Court of Appeals to be then and there held, and the record and proceedings aforesaid being inspected, the United States Court of Appeals may cause further to be done therein to correct the error what of right, and according to the laws and customs of the United States should be done.

Witness the Hon. Edward Douglas White, Chief Justice of the United States, this 29th day of June, A. D. 1916.

FRANK L. CROSBY,
Clerk of the United States District
Court for the Western District of
the State of Washington.
By F. M. HARSHBERGER,
Deputy Clerk.

(Seal of the U. S. District Court, Western District of Washington.)

Allowed this the 29th day of June, A. D. 1916.

EDWARD E. CUSHMAN,

(Filed June 29, 1916.)

Judge.

CITATION ON WRIT OF ERROR.

(Omitting Title.)

UNITED STATES OF AMERICA,

District of Washington,—ss.

To Ada T. Stewart and S. Warburton and Boyle, Brockway & Boyle, your attorneys of record;
GREETING.

You are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals for the Ninth Circuit, San Francisco, California, within thirty days from the date hereof, pursuant to a writ of error filed in the Clerk's office of the District Court of the United States for the District of Washington, wherein Prudential Insurance Company of America is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Given under my hand, at Seattle, in said District, this 26th day of June, in the year of our Lord, one thousand nine hundred and sixteen.

EDWARD E. CUSHMAN,

(Filed June 29, 1916.)

Judge.

Personal service admitted by counsel for defendant in error on June 30, 1916.

ASSIGNMENTS OF ERROR.

(Omitting Title.)

Now comes the Prudential Insurance Company of America, plaintiff in error, in the above numbered and entitled cause, and in connection with its petition for a Writ of Error in this cause assigns the following errors which plaintiff in error avers occurred on the trial thereof, and upon which it relies to reverse the judgment entered herein as appears of record:

First. The Court erred in overruling the demurrer interposed by the defendant to the complaint of the plaintiff, which demurrer was duly and seasonably served and filed in this cause, and to the overruling of which, the defendant, at the time duly excepted, and an exception was duly allowed by the court; the ground of said demurrer being that said complaint does not state facts sufficient to constitute any cause of action against defendant.

Second. At the commencement of the trial of said cause and prior to the reception of any testimony, plaintiff in error objected to the introduction of any testimony on the part of defendant in error for the reason that said complaint did not state a cause of action against plaintiff in error. That the Court erred in overruling said objection, to which action of the Court an exception was duly taken and allowed at the time.

Third. The Court also erred in denying the motion of plaintiff in error for judgment on the pleadings, which motion was also made prior to the commencement of said trial; to which ruling an exception was duly taken and allowed by the Court at the time.

Fourth. The Court erred in denying defendant's motion for a directed verdict in favor of defendant at the close of plaintiff's case; to which ruling plaintiff in error, at the time, duly excepted, and the exception was allowed.

Said motion was based upon the ground that defendant in error failed to offer any testimony or proof that entitled her to judgment against plaintiff in error; and furthermore, it appeared from the evidence and testimony offered by defendant in error that the contract of insurance had lapsed prior to the death of the insured.

Fifth. The Court erred in denying the motion of plaintiff in error for a directed verdict in its favor at the conclusion of all the testimony offered on the trial. To which ruling plaintiff in error at the time duly excepted and an exception was allowed.

The grounds of said motion were that the testimony wholly failed to establish any cause of action whatever in favor of the defendant in error; that the testimony and evidence offered, conclusively established the fact that plaintiff in error was in no wise liable to the plaintiff on the contract of insurance set out in her complaint; and furthermore, that the testimony and evidence offered on the trial proved that the contract of insurance set out in the complaint had lapsed and ceased to be a contract for any purpose prior to the insured's death.

Sixth. The Court erred in granting the motion of defendant in error for a directed verdict in her favor at the conclusion of all the testimony offered on the trial. To which ruling plaintiff in error at the time duly excepted, and an ex-

ception was allowed. Said ruling was erroneous, among others, on the following grounds: it was established by the evidence that defendant in error failed to establish her cause of action and also failed to establish the existence of any contract, of insurance, or otherwise, by which plaintiff in error was in any wise liable to defendant in error; and further, because it was established by the proof that the said contract of insurance had wholly lapsed and ceased to be in force for any purpose prior to the insured's death for the non-payment of premium as provided therein.

Seventh. The Court erred in accepting and recording the verdict of the jury for the reason and upon the grounds hereinbefore set out. To which ruling the plaintiff in error, at the time, duly excepted, and an exception was allowed.

Eighth. The Court committed error in the abuse of its discretion wherein it denied the petition of plaintiff in error for a new trial on each and all the grounds in said petition set out; to which ruling plaintiff in error at the time duly excepted and an exception was allowed.

Ninth. The Court erred in its refusal to hold that all the evidence offered on said trial was sufficient to sustain a judgment in favor of defendant in error and against plaintiff in error; to which rulings, plaintiff in error at the time duly excepted, and exceptions were allowed.

That said evidence was insufficient to justify the verdict and judgment for the following reasons: The following are all the facts established by the evidence received on said trial.

(a) The policy of insurance and application set out and annexed to the complaint of defendant

in error. The policy is dated February 19th, 1915. The first premium of \$12.70 was due and payable on the delivery of the policy; the next payment on May 19th, 1915.

(b) The plaintiff testified that the insured died July 19th, 1915. That he did not pay the first premium nor receive the policy of insurance until April 15th, 1915; that the premium due May 19th, 1915, was not paid. According to the terms of the policy the last day of grace for the payment of the premium due May 19th, 1915, was June 19th, 1915.

It is established by the testimony of Alfred Yantis, the agent who solicited the insurance, that on the 26th day of February, 1915, and within five days after the policy was mailed from the Home Office, he went to the home of the plaintiff and her husband, the insured, and tendered the policy to them; that the insured was not able to pay the first premium and requested the company to hold the policy until he got some money which he was expecting, when he would call and pay the first premium. The policy was returned to the office. According to the testimony of John D. Dole, the local superintendent of the company, the insured called at the company's office in Tacoma on April 15th, and paid the first premium; at that time the insured's attention was directed to the fact that the next premium would be due on the 19th of May. He said he knew that and that he would take care of it by that time. The first page of the policy was read over and fully explained to him, and his attention was especially called to the dates on which the premiums would mature. His attention was directed to the fact that the payment

of the first premium in April in no manner affected the payment of the next premium due May 19th, and the insured remarked that he understood that. From this testimony it is apparent that the insured interpreted the contract as providing for the payment of the second premium, as stated in the terms of the policy, on May 19th, 1915.

Tenth. The Court erred in peremptorily instructing the jury to return a verdict in favor of the defendant in error as follows: The plaintiff's motion for an instructed verdict will be granted. Gentlemen of the Jury, this policy, to read this whole provision, "premium \$12.70, payable on the delivery of this policy, and thereafter quarter-annually at the home office of the company, or as provided under the heading, 'Provisions' on the second page hereof, in exchange for the company's receipt on or before the 19th day of February, May, August and November in every year during the continuance of this policy until ten full years' premiums shall have been paid or the prior death of the insured." Now, if we had nothing to go by but by that language, some doubt might be admitted as to whether "quarter-annually" referred to after the date of the delivery of the policy and the payment of the first premium, or whether it referred to quarter dates afterwards, that is the 19th day of February, May, August and November after payment, but, when you pause to consider the purpose of the transaction, that is that that first \$12.70 paid for something, if that was a quarter's insurance, then it is wholly unreasonable to conclude that the insurance company was taking something for nothing, that it was taking a quar-

ter's insurance for thirty days' insurance. I, therefore, grant the plaintiff's motion, the policy being for \$5000.00, and three of the quarter payments of the premium for that year not having been paid, that will be deducted from the \$5000.00, leaving, as I understand the calculation of counsel, \$4961.90, and then interest on that at 6 per cent. from October 29th, 1915; to which the plaintiff in error at the time excepted and the exception was allowed.

Eleventh. The Court erred in signing entry and docketing the judgment in said cause against the plaintiff in error and in favor of defendant in error. To which action of the Court, plaintiff in error at the time excepted and the exception was allowed.

WHEREFORE, plaintiff in error prays that the judgment of said Court be reversed, and that judgment be directed to be entered therein in favor of the plaintiff in error and against the defendant in error for the dismissal of said cause.

Dated at Seattle, Washington, June 29, A. D. 1916.

S. A. KEENAN,
Attorney for Plaintiff in Error,
Seattle, Washington.

(Filed June 29, 1916.)

SUPERSEDEAS AND COST BOND.

(Omitting Title.)

KNOW ALL MEN BY THESE PRESENTS that we, the Prudential Insurance Company of America, a corporation, and the American Surety Company, a corporation, organized under the laws of the State of New York, of New York, and

authorized to transact business of surety in the State of Washington, as surety, are held and firmly bound unto Ada T. Stewart, defendant in error, in the full and just sum of Six Thousand Five Hundred Dollars (\$6,500.00) to be paid to the said Ada T. Stewart, her attorneys, successors, administrators, executors, or assigns, to which payment well and truly to be made we bind ourselves, our successors, assigns, executors and administrators, jointly and severally by these presents.

Signed and dated this the 29th day of June, A. D. 1916.

Whereas lately at a regular term of the District Court of the United States for the Western District of Washington, sitting at Tacoma, in said District, in a suit pending in said court between Ada T. Stewart as plaintiff and Prudential Insurance Company of America, a corporation, as defendant, cause No. 1915, on the law docket of said court final judgment was rendered against the said Prudential Insurance Company of America, a corporation, for the sum of Five Thousand One Hundred Thirty Five Dollars and Fifty Cents (\$5,135.50) and costs and disbursements therein with interest thereon at the rate of six per cent, and the said Prudential Insurance Company of America has obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment of the said court in the aforesaid suit, and a citation directed to the said Ada T. Stewart, defendant in error, citing her to be and appear before the United States Circuit Court of Appeals for the Ninth Circuit to be holden at San Francisco in the State of California

according to law within thirty (30) days from the date hereof.

Now the condition of the above obligation is such that if the said Prudential Insurance Company of America shall prosecute its writ of error to effect and answer all damages and costs if it fail to make its plea good, then the above obligation to be void, else to remain in full force and virtue.

Signed: PRUDENTIAL INS. CO. OF AMERICA,
By S. A. KEENAN, Its Attorney.

AMERICAN SURETY CO. OF NEW YORK,

B. S. H. MURSSEY,
Resident Vice-President.

FOREST BARRY,
Resident Assistant Secretary.

Approved this the 29th day of June, A. D.
1916.

EDWARD E. CUSHMAN,
(Filed June 29, 1916.) Judge.

**STIPULATION OF CONTENTS OF THE TRANSCRIPT OF
RECORD.**

(Omitting Title.)

It is hereby stipulated and agreed by and between the parties to the above entitled cause by their respective counsel that the following shall constitute the transcript of the record to be transmitted by the Clerk of the District Court to the Circuit Court of Appeals, to wit:—

1. Plaintiff's Complaint;
2. Process and Return;

3. Defendant's Demurrer to the Complaint;
4. Order Overruling Demurrer and Exception to Such Order;
5. Plaintiff's Reply;
6. Defendant's Motion to Strike Certain Portions of Reply;
7. Order Sustaining Motion Striking Certain Portions of Reply;
8. Impaneling Jury;
9. Verdict;
10. The Judgment;
11. Order Extending Time to June 30th, 1916, in which to Prepare, Serve and File Defendant's Proposed Bill of Exceptions;
12. Stipulation for Settlement of Bill of Exceptions;
13. Bill of Exceptions;
14. Petition for Writ of Error;
15. Assignment of Errors;
16. Bond and Approval;
17. Order Allowing Writ of Error;
18. The Writ of Error;
19. Citation in Error with Proof of Service Thereof;
20. Plaintiff's Exhibit I, the Policy of Insurance;
21. Plaintiff's Exhibit A, application for policy of insurance.
22. Clerk's Certificate.

Dated at Seattle, Washington, July 6th, 1916.

S. A. KEENAN,

Attorney for Plaintiff in Error.

S. WARBURTON,

BOYLE, BROCKWAY & BOYLE,

Attorneys for Defendant in Error.

(Filed July —, 1916.)

STIPULATION.

(Omitting Title.)

WHEREAS in the Stipulation heretofore entered into designating the papers and proceedings to be included in the transcript of the record forwarded in response to the Writ of Error issued in this case, there were inadvertently omitted therefrom the following papers:

Amended Answer,

Petition for a New Trial,

Order overruling Petition and Motion for a New Trial, and Exception Allowed.

IT IS THEREFORE, HEREBY STIPULATED, That the Clerk of the United States District Court prepare and forward to the Clerk of the United States Circuit Court certified copies of said papers and proceedings, and that the same be incorporated in and made a part of the record heretofore transmitted by said Clerk; and

IT IS FURTHER AGREED, That an Order may be made in accordance with this Stipulation.

Dated at Seattle, Washington, August 11th,
1916.

S. A. KEENAN,
Attorney for Plaintiff in Error.

S. A. WARBURTON,
BOYLE, BROCKWAY & BOYLE,
Attorneys for Defendant in Error.

ORDER.

On reading and considering the foregoing Stipulation, and this appearing a proper case for such an Order:

IT IS HEREBY ORDERED That the Clerk of this court incorporate in and make them a part of the record, the Amended Answer, Petition for a New Trial and Order denying the same, upon the receipt of certified copies thereof from the Court below.

WILLIAM W. MORROW,
Judge.

STIPULATION.

(Omitting Title.)

Whereas the greater portion of the application for insurance and all of the medical examination is deemed immaterial to the case presented in this court: IT IS HEREBY STIPULATED AND AGREED by and between the parties to this action that the following parts of the insurance contract be included in the printed record in this case, to wit:—

The entire insurance policy;

The first page of the application for insurance.

IT IS FURTHER STIPULATED that in printing the record in this case, the title of the

case wherever it appears may be omitted as well as all verifications and acknowledgments on the various instruments offered and received in evidence.

Plaintiff in Error, however, reserves the right to have the entire insurance contract included in the printed record if the Court so desires.

Dated August 12th, 1916.

S. A. KEENAN,
Attorney for Plaintiff in Error.

S. WARBURTON,
BOYLE, BROCKWAY & BOYLE,
Attorneys for Defendant in Error.

STIPULATION.

(Omitting Title.)

It is hereby stipulated and agreed by the parties to the above entitled case, through their respective counsel, that the printed transcript in this case consist of the following, it being deemed by both parties that the same comprise all parts of the record in any way material to its consideration in this court, to wit:—

1. Plaintiff's Complaint;
2. Demurrer to Complaint;
3. Order overruling Demurrer and exception thereto;
4. Amended and Substituted Answer;
5. Reply;
6. Motion to strike from Reply;
7. Order sustaining Motion to strike from Reply;
8. Impanelment of jury;

9. Verdict;
10. Judgment;
11. Petition for a new trial;
12. Order denying Petition for a new trial;
13. Order extending time for serving and filing Bill of Exceptions;
14. Stipulation for settlement of bill of exceptions;
15. Order settling Bill of exceptions;
16. Bill of Exceptions, (excepting the policy of insurance and application for insurance, annexed thereto, the material parts of which will appear subsequently in said transcript);
17. Petition for writ of error;
- 17½. Order for Writ of Error;
18. Writ of error;
19. Citation with proof of service;
20. Assignment of errors;
21. Bond on writ, and approval;
22. Stipulation as to contents of record;
23. Clerk's Certificate to transcript;
24. Stipulation as to contents of printed record;
25. Stipulation and order, adding to the transcript as originally certified;
26. Plaintiff's Exhibit "A" and Defendant's Exhibit A being material parts of the application of insurance and the policy of insurance, annexed to Plaintiff's Complaint, offered in evidence on the trial, and annexed to the Bill of Exceptions;

27. Stipulation specifying the portions of the policy of insurance and application for insurance to be printed in this record;

28. Order extending time for filing transcript.

It is further stipulated and understood by both parties, that in the event the Court should deem it necessary to have the policy of insurance and the application printed in full in the record, then and in that event, the Plaintiff in Error reserves the right to have the same printed and inserted as the Court may direct.

Dated at Seattle, Washington, August 9th, 1916.

S. A. KEENAN,
Attorney for Plaintiff in Error.

S. WARBURTON,
BOYLE, BROCKWAY & BOYLE,
Attorneys for Defendant in Error.

ORDER ENLARGING TIME TO FILE TRANSCRIPT.

(Omitting Title.)

Now on this 26th day of July, 1916, for good cause shown, IT IS ORDERED that the defendant's time for filing and docketing the record on Writ of Error in this cause in United States Circuit Court of Appeals, Ninth District, be and the same is hereby enlarged and extended up to and including August 5th, 1916.

EDWARD E. CUSHMAN,
(Filed July 26, 1916.) Judge.

CLERK'S CERTIFICATE TO TRANSCRIPT.

UNITED STATES OF AMERICA,)
 WESTERN) ss.
 DISTRICT OF WASHINGTON.)

I, FRANK L. CROSBY, Clerk of the United States District Court of the Western District of Washington, do hereby certify and return that the foregoing is a full, true and correct transcript of the record and proceedings in the above cause, as the originals thereof appear on file in my office in said District, at Tacoma, made pursuant to the stipulation of counsel filed herein, and that the same constitutes the return on the Writ of Error.

I further certify that the following is a full, true and correct statement of all expenses, costs and fees and charges incurred and paid in my office by and on behalf of the Plaintiff in Error for making the preceding record, certificate and return to the United States Circuit Court of Appeals for the Ninth Circuit, to-wit:

Clerk's fees (Sec. 828 R. S. U. S.),	130	
folios at 15c-----		\$19.50
Certificate of Clerk to this transcript-----		.30
Seal to said certificate-----		.20

ATTEST my official signature and the seal of this Court, at Tacoma, in said District, this 24th day of August, A. D. 1916.

(Seal)